

### C. Cable System Operators (SIC 4841)

68. *Cable Systems*: The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating less than \$11 million in revenue annually.<sup>117</sup> This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1,423 such cable and other pay television services generating less than \$11 million in revenue.<sup>118</sup>

69. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company," is one serving fewer than 400,000 subscribers nationwide.<sup>119</sup> Based on our most recent information, we estimate that there were 1,439 cable systems that qualified as small cable system operators at the end of 1995.<sup>120</sup> Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable systems. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the decisions and rules proposed in this Notice.

70. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."<sup>121</sup> The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate.<sup>122</sup> Based on available data, we find that the number of cable systems serving 617,000 subscribers or less totals 1,450.<sup>123</sup> Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable systems under the definition in the Communications Act.

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<sup>117</sup> 13 C.F.R. § 121.201, SIC 4841.

<sup>118</sup> U.S. Department of Commerce, Bureau of Census, 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D, SIC 4841 (Bureau of the Census data under contract to the Office of Advocacy of the SBA).

<sup>119</sup> 47 C.F.R. § 76.901(e). The Commission developed this definition based on its determinations that a small cable system operator is one with annual revenues of \$100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393.

<sup>120</sup> Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

<sup>121</sup> 47 U.S.C. § 543(m)(2).

<sup>122</sup> 47 C.F.R. § 76.1403(b).

<sup>123</sup> See *supra* note 121.

71. *Municipalities:* The term "small governmental jurisdiction" is defined as "governments of . . . districts, with a population of less than fifty thousand."<sup>124</sup> There are 85,006 governmental entities in the United States.<sup>125</sup> This number includes such entities as states, counties, cities, utility districts and school districts. We note that Section 224 of the Act specifically excludes any utility which is cooperatively organized, or any person owned by the Federal Government or any State. For this reason, we believe that Section 224 will have minimal if any affect upon small municipalities. Further, there are 18 States and the District of Columbia that regulate pole attachments pursuant to Section 224(c)(1). Of the 85,006 governmental entities, 38,978 are counties, cities and towns. The remainder are primarily utility districts, school districts, and states. Of the 38,978 counties, cities and towns, 37,566 or 96%, have populations of fewer than 50,000.

72. *Reporting, Recordkeeping, and other Compliance Requirements:* The rules proposed in this Notice will require a change in certain record keeping requirements. A pole owner will now have to maintain specific records relating to the number of attachers for purposes of computing the usable and unusable space calculation for the telecommunications carrier rate formula. We seek comment on whether small entities may be required to hire additional staff and expend additional time and money to comply with the proposals set forth in this Notice. In addition, we seek comment as to whether there will be a disproportionate burden placed on small entities in complying with the proposals set forth in this Notice.

73. *Significant Alternatives Which Minimize the Impact on Small Entities and which are Consistent with State Objectives:* The 1996 Act requires the Commission to propose a telecommunications carrier methodology within two years of the enactment of the 1996 Act.<sup>126</sup> We seek comment on various alternative ways of implementing the statutory requirements and any other potential impact of these proposals on small business entities. We seek comment on the implementation of a methodology to ensure just, reasonable and nondiscriminatory pole attachment and conduit rates for telecommunications carriers. We also seek comment on how to develop a rights-of-way rate methodology for telecommunications carriers.

74. *Federal Rules which Overlap, Duplicate, or Conflict with the Commission's Proposal:* None.

## **X. INITIAL PAPERWORK REDUCTION ACT OF 1995 ANALYSIS**

75. This Notice contains either proposed or modified information collections. The Commission, as part of its continuing effort to reduce paperwork burdens and to obtain regular Office of Management and Budget ("OMB") approval of the information collections, invites the general public and OMB to comment on the information collections contained in this rulemaking, as required by the Paperwork Reduction Act of 1995. Public and agency comments are due at the same time as other comments relating to this Notice; OMB notification of action is due 60 days from date of publication of this Notice in the Federal Register. Comments should address: (a) whether the proposed collection of

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<sup>124</sup> 5 U.S.C. § 601(5).

<sup>125</sup> United States Dept. of Commerce, Bureau of the Census, *1992 Census of Governments*.

<sup>126</sup> See *supra* paragraphs 15-44.

information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

## **XI. PROCEDURAL PROVISIONS**

76. *Ex parte Rules - Non-Restricted Proceeding.* This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in Commission's rules. See generally 47 C.F.R. §§ 1.1202, 1.1203, and 1.1206(a).

77. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before September 26, 1997 and reply comments on or before October 14, 1997. To file formally in this proceeding, you must file an original and six copies of all comments, reply comments, and supporting comments. Parties are also asked to submit, if possible, draft rules that reflect their positions. If you want each Commissioner to receive a personal copy of your comments, you must file an original and eleven copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to Larry Walke of the Cable Services Bureau, 2033 M Street, N.W., 4th Floor, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C. 20554.

78. Parties are also asked to submit comments and reply comments on diskette, where possible. Such diskette submissions would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Larry Walke of the Cable Services Bureau, 2033 M Street, N.W., 4th Floor, Washington, D.C. 20554. Such a submission must be on a 3.5 inch diskette formatted in an IBM compatible form using MS DOS 5.0 and WordPerfect 5.1 software. The diskette should be submitted in "read only" mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. The diskette should be accompanied by a cover letter.

79. Written comments by the public must be submitted at the same time as those of the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before 60 days after publication of the Notice in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to [jboley@fcc.gov](mailto:jboley@fcc.gov), and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725-17th Street, N.W., Washington, D.C. 20503 or via the Internet to [fain\\_t@al.eop.gov](mailto:fain_t@al.eop.gov).

**XII. ORDERING CLAUSES**

80. IT IS ORDERED that pursuant to Sections 1, 4(i), 4(j), 224, 303 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 224, 303 and 403, NOTICE IS HEREBY GIVEN of the proposals described in this Notice of Proposed Rulemaking.

81. IT IS FURTHER ORDERED that the Secretary shall send a copy of this Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance the Regulatory Flexibility Act, 5 U.S.C. § 603 (2).

82. For additional information regarding this proceeding, contact Larry Walke of the Cable Services Bureau (202) 418-7200.

FEDERAL COMMUNICATIONS COMMISSION

  
William F. Caton  
Acting Secretary

# APPENDIX A - POLE ATTACHMENT FORMULAS (Modified as Proposed)

## Telecommunications Companies :

Maximum Rate	=	$\frac{(\text{Space Occupied by Attachment}) \times \text{Carrying Charge Rate} \times \text{Net Pole Investment} \times .95}{\text{Total Usable Space} \times \text{Total \# of Poles}}$
Total Carrying Charge Rate	=	Administrative + Maintenance + Depreciation + Taxes + Return
Administrative Carrying Charge Rate	=	$\frac{\text{Total Administrative and General (Accounts 6710+6720+6110+6120+6534+6535)}}{\text{Gross Plant Investment} - \text{Accum. Depreciation, Account 3100} - \text{Accum. Deferred Taxes, Plant}}$
Maintenance Carrying Charge Rate	=	$\frac{\text{Account 6411} - \text{Rental Expense, Poles}}{\text{Net Pole Investment}}$
Depreciation Carrying Charge Rate	=	Depreciation Rate, Poles
Tax Carrying Charge Rate	=	$\frac{\text{Operating Taxes, Account 7200}}{\text{Gross Plant Investment} - \text{Accum. Depreciation, Account 3100} - \text{Accum. Deferred Taxes, Plant}}$
Return Carrying Charge Rate	=	Applicable Rate of Return
Space Occupied by Attachment	=	1 foot
Total Usable Space	=	13.5 feet (Subject to Rebuttal)
Gross Plant Investment	=	Account 2001
Gross Pole Investment	=	Account 2411
Net Pole Investment	=	Account 2411 - Accum. Depreciation, Poles - Accum. Deferred Income Taxes, Poles